

112TH CONGRESS
2D SESSION

S. 3271

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2012

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide all Medicare beneficiaries with the right to guaranteed issue of a Medicare supplemental policy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Access to Medi-
5 care Options Act of 2012”.

6 **SEC. 2. GUARANTEED ISSUE OF MEDIGAP POLICIES TO ALL**
7 **MEDICARE BENEFICIARIES.**

8 (a) IN GENERAL.—Section 1882(s) of the Social Se-
9 curity Act (42 U.S.C. 1395ss(s)) is amended—

1 (1) in paragraph (2)(A), by striking “65 years
2 of age or older and is enrolled for benefits under
3 part B” and inserting “entitled to, or enrolled for,
4 benefits under part A and enrolled for benefits
5 under part B”;

6 (2) in paragraph (2)(D), by striking “who is 65
7 years of age or older as of the date of issuance and”;
8 and

9 (3) in paragraph (3)(B)(vi), by striking “at age
10 65”.

11 (b) EFFECTIVE DATE; PHASE-IN AUTHORITY.—

12 (1) EFFECTIVE DATE.—Subject to paragraph
13 (2), the amendments made by subsection (a) shall
14 apply to Medicare supplemental policies effective on
15 or after January 1, 2014.

16 (2) PHASE-IN AUTHORITY.—

17 (A) IN GENERAL.—Subject to subpara-
18 graph (B), the Secretary of Health and Human
19 Services may phase in the implementation of
20 the amendments made under subsection (a) in
21 such manner as the Secretary determines ap-
22 propriate in order to minimize any adverse im-
23 pact on individuals enrolled under a Medicare
24 supplemental policy prior to January 1, 2014.

1 (B) PHASE-IN PERIOD MAY NOT EXCEED 5
 2 YEARS.—The Secretary of Health and Human
 3 Services shall ensure that the amendments
 4 made by subsection (a) are fully implemented
 5 by not later than January 1, 2019.

6 (c) SEPARATE PREMIUM CLASS.—

7 (1) IN GENERAL.—Subject to paragraph (2),
 8 any individuals enrolled under a Medicare supple-
 9 mental policy pursuant to the amendments made
 10 under subsection (a) shall be classified by the issuer
 11 as part of a separate premium class.

12 (2) LIMIT.—The provision in paragraph (1)
 13 shall apply to individuals that enroll under a Medi-
 14 care supplemental policy prior to January 1, 2019.

15 (d) ADDITIONAL ENROLLMENT PERIOD FOR CER-
 16 TAIN INDIVIDUALS.—

17 (1) ONE-TIME ENROLLMENT PERIOD.—

18 (A) IN GENERAL.—In the case of an indi-
 19 vidual described in paragraph (2), the Secretary
 20 shall establish a one-time enrollment period
 21 during which such an individual may enroll in
 22 any Medicare supplemental policy of the indi-
 23 vidual's choosing.

24 (B) PERIOD.—The enrollment period es-
 25 tablished under subparagraph (A) shall begin

1 on the date on which the phase-in period under
2 subsection (b) is completed and end 6 months
3 after such date.

4 (2) INDIVIDUAL DESCRIBED.—An individual de-
5 scribed in this paragraph is an individual who—

6 (A) is entitled to hospital insurance bene-
7 fits under part A under section 226(b) or sec-
8 tion 226A of the Social Security Act (42 U.S.C.
9 426(b); 426–1);

10 (B) is enrolled for benefits under part B of
11 such Act (42 U.S.C. 1395j et seq.); and

12 (C) would not, but for the provisions of
13 and amendments made by this section, be eligi-
14 ble for the guaranteed issue of a Medicare sup-
15 plemental policy under section 1882(s)(2) of
16 such Act (42 U.S.C. 1395ss(s)(2)).

17 (3) OUTREACH PLAN.—The Secretary shall de-
18 velop an outreach plan to notify individuals de-
19 scribed in paragraph (2) of the one-time enrollment
20 period established under paragraph (1).

1 **SEC. 3. GUARANTEED ISSUE OF MEDIGAP POLICIES FOR**
 2 **MEDICARE ADVANTAGE AND MEDICAID EN-**
 3 **ROLLEES.**

4 (a) IN GENERAL.—Section 1882(s)(3) of the Social
 5 Security Act (42 U.S.C. 1395ss(s)(3)), as amended by sec-
 6 tion 2, is amended—

7 (1) in subparagraph (B), by adding at the end
 8 the following new clauses:

9 “(vii) The individual was enrolled in a Medicare
 10 Advantage plan under part C for not less than 12
 11 months and subsequently disenrolled from such plan
 12 and elects to receive benefits under this title through
 13 the original Medicare fee-for-service program under
 14 parts A and B.

15 “(viii) The individual—

16 “(I) is entitled to, or enrolled for, benefits
 17 under part A and enrolled for benefits under
 18 part B;

19 “(II) was eligible for medical assistance
 20 under a State plan or waiver under title XIX
 21 and was enrolled in such plan or waiver; and

22 “(III) subsequently lost eligibility for such
 23 medical assistance.”;

24 (2) by striking subparagraph (C)(iii) and in-
 25 serting the following:

1 “(iii) Subject to subsection (v)(1), for purposes
 2 of an individual described in clause (vi), (vii), or
 3 (viii) of subparagraph (B), a Medicare supplemental
 4 policy described in this subparagraph shall include
 5 any Medicare supplemental policy.”; and

6 (3) in subparagraph (E)—

7 (A) in clause (iv), by striking “and” at the
 8 end;

9 (B) in clause (v), by striking the period at
 10 the end and inserting a semicolon; and

11 (C) by adding at the end the following new
 12 clauses—

13 “(vi) in the case of an individual described in
 14 subparagraph (B)(vii), the annual, coordinated elec-
 15 tion period (as defined in section 1851(e)(3)(B)) or
 16 a continuous open enrollment period (as defined in
 17 section 1851(e)(2)) during which the individual
 18 disenrolls from a Medicare Advantage plan under
 19 part C; and

20 “(vii) in the case of an individual described in
 21 subparagraph (B)(viii), the period beginning on the
 22 date that the individual receives a notice of cessation
 23 of such individual’s eligibility for medical assistance
 24 under the State plan or waiver under title XIX and

1 ending on the date that is 123 days after the indi-
 2 vidual receives such notice.”.

3 (b) EFFECTIVE DATE.—The amendments made by
 4 subsection (a) shall apply to Medicare supplemental poli-
 5 cies effective on or after January 1, 2014.

6 **SEC. 4. ENROLLMENT OF INDIVIDUALS WITH END STAGE**
 7 **RENAL DISEASE IN MEDICARE ADVANTAGE.**

8 (a) IN GENERAL.—Section 1851(a) of the Social Se-
 9 curity Act (42 U.S.C. 1395w–21(a)) is amended by strik-
 10 ing paragraph (3) and inserting the following:

11 “(3) MEDICARE ADVANTAGE ELIGIBLE INDIVIDUAL.—In this title, the term ‘Medicare Advan-
 12 tage eligible individual’ means an individual who is
 13 entitled to benefits under part A and enrolled under
 14 part B.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 1852(b) of the Social Security Act
 17 (42 U.S.C. 1395w–22(b)) is amended by striking
 18 paragraph (1) and inserting the following:

19 “(1) BENEFICIARIES.—A Medicare Advantage
 20 organization may not deny, limit, or condition the
 21 coverage or provision of benefits under this part, for
 22 individuals permitted to be enrolled with the organi-
 23 zation under this part, based on any health status-
 24 related factor described in section 2702(a)(1) of the
 25

1 Public Health Service Act. The Secretary shall not
2 approve a plan of an organization if the Secretary
3 determines that the design of the plan and its bene-
4 fits are likely to substantially discourage enrollment
5 by certain MA eligible individuals with the organiza-
6 tion.”.

7 (2) Section 1859(b)(6)(B) of such Act (42
8 U.S.C. 1395w-28(b)(6)(B)) is amended in the sec-
9 ond sentence by striking “may waive application of
10 section 1851(a)(3)(B) in the case of an individual
11 described in clause (i), (ii), or (iii) of this subpara-
12 graph and”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to plan years beginning on or after
15 January 1, 2014.

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